



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
PO BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

URSULA B. DAY, ESQ.
350 FIFTH AVE.
SUITE 3220
NEW YORK NY 10118

COPY MAILED

SEP 14 2004

OFFICE OF PETITIONS

In re Application of :
Schaller et al. :
Application No. 10/766,435 : DECISION ON PETITION
Filed: January 27, 2004 :
Attorney Docket No. SCHALLER 2/1 :

This is a decision on the petition filed August 5, 2004, requesting that the above-identified application be accorded a filing date of January 27, 2004, with page 28 of the specification as part of the original disclosure.

On January 27, 2004, applicants filed the above-identified application. On June 21, 2004, the Office of Initial Patent Examination mailed a "Notice of Omitted Item(s) in a Nonprovisional Application" (Notice), stating that the application had been accorded a filing date of January 27, 2004, and advising applicants that page 28 of the specification appeared to have been omitted.

In response, on August 5, 2004, applicants filed the present petition, the petition fee, and a copy of applicants' postcard receipt acknowledging receipt of, *inter alia*, "Continuation Application 36 pp., 7 drawings" on January 27, 2004. Additionally, applicants submitted page 28 of the specification with the present petition.

In the present petition, applicants state that the application was filed with a total of 43 pages consisting of 30 pages of specification, 5 pages of claims, 1 page of abstract, and 7 pages of drawings. Applicants request that the application, including page 28 of the specification, be accorded a filing date of January 27, 2004.

Upon review of the record, page 28 of the specification, deposited on January 27, 2004, has not been located among the application papers. However, the evidence is convincing that the application papers deposited on January 27, 2004, included page

28 of specification, which was subsequently misplaced in the United States Patent and Trademark Office. Therefore, the application, including page 28, was complete on filing and will be granted a filing date of January 27, 2004.

Accordingly, the petition is granted.

The Notice of June 21, 2004, was sent in error and is hereby vacated. Accordingly, the \$130.00 petition fee is unnecessary and will be credited to Deposit Account No. 50-1747.

The Office of Initial Patent Examination is directed to process the application with a filing date of January 27, 2004, using the application papers submitted on that date and page 28 of the specification submitted with the present petition.

Any inquiries related to this decision should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell
Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions